

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES SHIVE,

Plaintiff,

v.

No. CIV 15-0406 JB/WPL

AMAZON.COM INC.; EBAY, INC.;
JOHN LAVECCHIA; J&C BASEBALL
CLUBHOUSE, INC.; SEARS HOLDING
CORPORATION; UNBEATABLE
SALE.COM INC. and WAL-MART STORES, INC.,

Defendants.

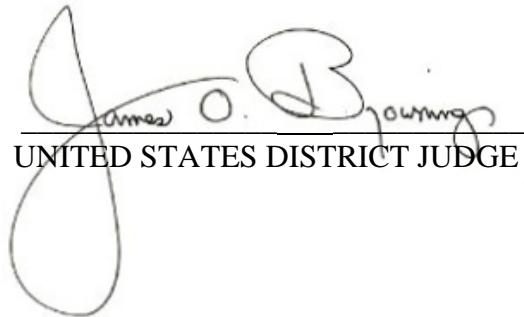
**MEMORANDUM OPINION AND ORDER DENYING MOTION FOR DEFAULT
JUDGMENT**

THIS MATTER comes before the Court on Plaintiff James Shive's Second Motion for Default Judgment Against Defendant J&C Baseball Clubhouse, Inc., filed April 5, 2017 (Doc. 73). The Court previously set aside default and denied Plaintiff James Shive's Motion for Default Judgment, filed February 23, 2017 (Doc. 71). See Memorandum Opinion and Order, filed March 23, 2017 (Doc. 72)(“Order”). The Court previously explained that Shive could reapply for a Clerk's entry of default and may then refile his Motion for Default Judgment under rule 55 of the Federal Rules of Civil Procedure.

Shive again filed for default judgment pursuant to rule 55, but did not reapply to the Clerk of the Court for entry of default. As the Court previously explained, attaining default judgment is a two-step process: the Clerk of the Court must enter default, and then the plaintiff must move for default judgment. See Fed. R. Civ. P. 55; Williams v. Smithson, 57 F.3d 1081, 1995 WL 365988, at *1 (10th Cir. 1995)(Table)(“Rule 55 mandates a two-step process for a party who seeks a default judgment in his favor.”). Because Shive has not applied for entry of

default from the Clerk of Court, the Court cannot presently grant his motion for default judgment. See Fed. R. Civ. P. 55; Williams v. Smithson, 1995 WL 365988, at *1. The Court will therefore deny Shive's motion for default judgment.

IT IS ORDERED that Plaintiff James Shive's Second Motion for Default Judgment Against Defendant J&C Baseball Clubhouse, Inc., filed April 5, 2017 (Doc. 73), is denied.



James O. B. Young
UNITED STATES DISTRICT JUDGE

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